FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5838 OF 2005

Office notes, office Memoranda of Coram, appearances, Court's orders or directions & Registrar's orders.	Court's or Judge's Orders

Mr. Kantharia i/b J. B. Mishra for petitioner

Mr. V. K. Chaudhari for R-1

CORAM: SMT. RANJANA DESAI, J.
26/9/2005

P.C.:-

By the impugned order the trial court has allowed application Exh-33 filed by the original defendant for filing counterclaim on conditin that he deposits the money which is claimed by the plaintiff i.e. an amount of Rs.3,82,000/- in the court till the next date.

2. I have heard Mr. Kantharia, learned counsel for the petitoiner-original defendant. He submitted that the trial court erred

in directing the defendant to deposit an amount of Rs.3,82,000/- in the court. He drew my attention to paragraph 4 of written statement and contended that the amount mentioned in the said paragraph has been paid by the defendant to the plaintiff and the learned Judge should have taken this fact into consideration.

3. The learned counsel for the respondent contended that the counterclaim was filed belatedly after the examination-in-chief of the plaintiff and one more witness of the plaintiff is over. He submitted that the defendant is in possession of the suit premises and hence in the circumstances the order passed by the trial court is justified. The learned counsel further submitted that the plaintiff is not admitting that the defendant has made payment as stated in paragraph 4 of written statement.

4. In my opinion, asking the defendant to deposit the amount of Rs.3,82,000/- in the court would not

be proper. However, considering the fact that the defendant is in possession of the suit premises and the counterclaim is filed belatedly, the defendant should be saddled with heavy costs. Hence the following order:

a) The application Exh.-33 for filing of counterclaim is allowed on condition that the defendant pays cost quantified at Rs.30,000/- to the plaintiff within a period of thre weeks from today.

b) It is clarified that payment of cost is condition precedent to taking the counterclaim on record. In the circumstances of the case the suit is expedited. The parties can make an application to the trial court praying for expeditious disposal of the suit.

c) Writ petition is disposed of in the aforestated terms.

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